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HUMAN RIGHTS COMMITTEE

Fifty-fifth session

SUMMARY RECORD OF THE 1458th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 24 October 1995, at 3 p.m.

Chairman: Mr. AGUILAR URBINA

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GE.95-19188 (E)

The meeting was called to order at 3.15 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)
(M/CCPR/54/WORKMET/2)

1. Mr. KRETZMER reminded the Committee that at the fifty-fourth session he had warned that unless precedence was given to consideration of communications, the Committee would arrive at the end of the session without having taken action on the large number of those awaiting decision. That had indeed been the case, with the result that at the final meeting of that session many communications had been processed far too quickly - not at all a satisfactory way of dealing with such important material. He accordingly called on the Chairman to devise some way of averting such situations in future, and to consider giving precedence to the consideration of communications over that of State reports.

2. The CHAIRMAN noted that, according to its programme of work, the Committee would devote six meetings to communications before the close of the current session.

3. Mr. BUERGENTHAL agreed that the consideration of communications was of great importance, but as the Chairman had just pointed out, the programme of work allowed a generous amount of time for that activity before the end of the session.

4. Mr. LALLAH said he wholeheartedly supported Mr. Kretzmer's remarks. He could suggest two ways of ensuring that communications were given due consideration, so that the Committee could take an informed decision on them. First, a number of Committee members should be assigned to give special attention to specific communications, so that the whole file would be familiar to them and they could brief the other members of the Committee if necessary. Or secondly, members should be advised, the day before a given communication was scheduled for consideration, to take home the relevant file so they could study it carefully.

5. The CHAIRMAN said an additional option might be to establish a time-limit for statements by Committee members, as in the consideration of State party reports. It would also be useful for the rapporteur and the secretariat to be fully conversant with the facts of a given case; much time had been lost the week before when the Committee's discussion of a case had been based on erroneous information from the secretariat. And finally, there was no denying that certain members had a special interest in certain cases and tended to monopolize the discussion, speaking more often than was strictly necessary. All members should exercise self-restraint in taking the floor on communications, as they were beginning to do with regard to reports from States parties.

6. Mr. ANDO reminded members of the Committee that the current meeting was a public one: in discussing communications, they must refrain from identifying specific cases.

7. Mr. KLEIN said that for future sessions any time made available by completing State party reports expeditiously should be reallocated to the discussion of communications. That item should be taken up immediately following the reports, and other matters left until last, at the end of the session. By establishing that kind of chronological order, the Committee would ensure that items were treated with the priority they deserved.

8. The CHAIRMAN observed that it was during the discussions on the programme of work, prior to the opening of each session, that members could and should express their views on the order for consideration of the various items. The suggestions on reduction of the time devoted to work on State party reports needed extensive further discussion, for many members deemed that activity to be an important aspect of the Committee's work which differentiated it from other treaty bodies.

9. He invited the Committee to resume its consideration of the recommendation by the Working Group concerning the Committee's methods of work under article 40 of the Covenant (M/CCPR/54/WORKMET/2).

10. Mr. BAN said he felt confident that, given the number of meetings now allocated to communications before the end of the session, the Committee would complete its work on them in good time.

11. Turning to the document on methods of work, he said it might be advisable, at the meeting to be devoted to its consideration the following week, not to take up the final section on general comments. The Committee should instead try to finish work on the draft general comment on article 25, only a few paragraphs of which remained to be discussed.

12. Mr. BHAGWATI agreed with Mr. Klein that communications were an important part of the Committee's work and that action must be taken before the end of each session on all communications requiring decisions. He also agreed that it would be useful to set a timetable for taking up specific communications, so that members could come to the meetings properly prepared.

13. Care must be taken if the Committee was to shorten the time devoted to consideration of reports, which was an another important part of its mandate under the Covenant. Instead of according primary or secondary importance to consideration of communications vis-à-vis reports, the Committee should simply try to use its time in the most economical matter overall.

14. He agreed with Mr. Ban that there was ample time to complete the consideration of communications at the present session, and that one meeting should be devoted to work on the draft general comment on article 25, which was very close to completion.

15. Mr. POCAR, speaking on a point of order, said the Chairman had invited the Committee to discuss the Working Group's recommendation on methods of work, and that was what it should do forthwith.

16. Mr. KLEIN introduced paragraphs 9 to 15 of the recommendation, which read:

"Follow up to the activities under article 40 of the Covenant

9. The Working Group was mandated to work out the details of a new procedure to monitor Committee activities under article 40 of the Covenant, as suggested by the Working Group that met prior to the fifty-third session. Its proposals are as follows:

10. Role of the Committee's Rapporteur: The Working Group recommends that the Committee's Rapporteur should play a leading role in the activities of the Committee with regard to special decisions to be taken in emergency situations, long overdue reports and, more generally, with regard to any issues relating to the implementation of the Committee's decisions under article 40 of the Covenant. Additionally, a recurrent item entitled 'Special decisions under article 40 of the Covenant' should henceforth be included in the Committee's agenda.

11. Special decisions: The Working Group believes that the Rapporteur may suggest to the Bureau, when he or she deemed it necessary, the adoption by the plenary of a special decision requesting a State to submit a brief report on the implementation of certain provisions of the Covenant. Such decisions should be taken when a situation arises where human rights are seriously jeopardized. In order to identify situations falling within the framework of this decision, each member of the Committee should be mandated to draw the attention of the Rapporteur to any situation or development that may deserve special consideration by the Committee.

12. Long overdue reports: It is further suggested that the Rapporteur considers the situation of human rights in States parties which are in serious default of their obligations under article 40 of the Covenant, i.e. whose initial or periodic reports are overdue for more than five years or that have more than one report overdue. In order to do so, the Rapporteur may wish to use information stemming from other United Nations bodies or non-governmental organizations. The Rapporteur may then suggest whether any of these countries may be the subject of a special decision as specified in paragraph 11 above.

13. Lack of implementation of the Committee's comments: The Working Group also suggests that a similar course of action may be adopted by the Rapporteur when suggestions and recommendations adopted by the Committee are clearly not followed up by the State party and where such a situation indicates that human rights are seriously jeopardized in the country.

14. Lack of implementation of special decisions: The Working Group also noted that in certain recent cases, States did not submit a report following the adoption of a special decision by the Committee. Under those circumstances, the Working Group believes that, in each such case, a new decision be taken including specific issues to be addressed by the authorities and that the Government be asked to send a delegation to provide replies to those questions and thus resume its dialogue with the Committee. A similar course of action may be suggested by the Rapporteur for certain States which are seriously in default of their obligations under article 40 of the Covenant.

15. Missions in the field: Lastly, the Working Group believes that the Rapporteur should bear specific responsibility as to the implementation of the decision taken by the Committee at the fifty-second session of the Committee according to which, 'where the consideration of a report reveals a grave human rights situation, the Committee may request the State party concerned to receive a mission consisting of one or more members of the Committee in order to resume its dialogue with the State party, develop a fuller understanding of the situation, and make appropriate suggestions or recommendations'."

17. Paragraphs 11 to 14 of the recommendation dealt with special decisions the Committee might take in a number of instances, such as serious and ongoing violations of human rights, reports whose submission was long overdue, failure to heed the Committee's observations, and failure to implement special decisions adopted earlier by the Committee.

18. The Working Group had also drafted an additional paragraph, to become paragraph 14.b, which read:

14.b The Working Group further noted that in specific circumstances the dialogue with representative(s) of States parties may not be as constructive as expected, when information provided proves to be insufficient or replies to questions and comments remain unsatisfactory. In such cases, the Working Group suggests that preliminary Observations may be adopted and that the reporting State be requested to submit additional information as soon as possible in order for the dialogue to be resumed at a forthcoming session. Adoption of the Concluding Observations would then be deferred to that session."

19. Paragraph 15 referred to missions that might be undertaken by members of the Committee when consideration of a report revealed a grave human rights situation.

20. The final section of the recommendation, paragraphs 16 and 17, was entitled "General Comments". It read:

"General Comments

16. The Working Group reviewed past general comments with a view to identifying provisions of the Covenant which have not yet been addressed as well as comments which would deserve to be updated. It noted that no general comment has ever been prepared with regard to articles 5, 8, 11, 12, 15, 21 and 22 of the Covenant, although some comments may incidently address issues relating to certain aspects of the rights concerned. It further noted that general comments relating to articles 3, 19 and 20 were of a very concise nature and should be considered for updating.

17. In view of the foregoing, the Working Group suggests that new general comments be envisaged with regard to article 12, articles 21 and 22 and article 15. Existing general comments on article 3 and articles 19 and 20 should also be updated. It further recommends that work be initiated in the following order: (i) new General Comment on articles 21 and 22; (ii) new General Comment on article 12; (iii) update

of General Comment 15 (23) relating to article 3; (iv) new General Comment on article 15; and (v) updating of General Comments 10 (19) and 11 (19)."

21. The Working Group was suggesting a procedure by which the consideration of general comments would start with work on a new general comment on articles 21 and 22, then go on to a new general comment on article 12, and finish with the general comments that had already been drafted but needed to be updated.

22. Mr. LALLAH said that the recommendation was useful both in general and with particular reference to the action to be taken by the Rapporteur in respect of long overdue reports, but members other than the Rapporteur also bore responsibility for alerting the Committee to such problems. Every year the Chairman assigned a number of members to meet with representatives of States parties to discuss how best to ensure compliance with obligations under article 40 of the Covenant. Members of the Committee also held informal discussions with representatives of countries that were experiencing special difficulties in the field of human rights. He saw no need for the special decisions suggested in paragraph 11, since any Committee member in possession of relevant information had the inherent right to make proposals on how to handle problem cases. Finally, he did not see any need for an additional agenda item on special decisions.

23. Mr. EL SHAFEI agreed with Mr. Lallah and added that in the past the entire Bureau had reviewed serious violations of human rights in order to recommend a particular course of action. He endorsed paragraph 10 of the recommendation but thought that paragraph 11, on special decisions, should be revised to indicate that the Rapporteur and the Bureau should work together on such matters. He would also suggest that the word "mandated" in the final sentence be replaced by a less peremptory term.

24. Ms. EVATT, referring to paragraphs 10 and 11 of the recommendation, said she questioned the procedure adopted by the Committee to deal with cases where human rights were seriously jeopardized and thought the criteria used to decide which States should submit special reports needed further elaboration. It was truly unfortunate that there was no provision for follow-up after a special report had been submitted.

25. Mr. POCAR said he reserved the right to express his views at a later date on the first part of paragraph 10, dealing with the Rapporteur's role with regard to special decisions. On the final sentence, he agreed with Mr. Lallah that it was unnecessary to add to the Committee's agenda an item on special decisions, since that topic could be subsumed under the item on submission of reports by States parties under article 40 of the Covenant. On the other hand, he thought a separate item should be included for the discussion of general comments.

26. Turning to paragraph 11, he agreed with Ms. Evatt that the Committee should review its procedures and criteria for adopting special decisions. In the past, there had been two preconditions for such a measure: the State party's report had been long overdue and a human rights emergency clearly existed. Subsequently, the first precondition had been dropped: in the cases

of the former Yugoslavia and Peru, for example, the only criterion had been that of a human rights crisis. An entirely new approach was now being proposed, however, since the second sentence of paragraph 11 referred not to an emergency but only to a "situation". The Committee must give serious consideration to whether it wished to consolidate that new approach. The danger was that the sole motivation for a special decision would be a non-objective one: the Committee's evaluation of a given situation as being one in which human rights were seriously jeopardized.

27. Mr. BRUNI CELLI endorsed the Working Group's proposal to include an item on special decisions. A periodicity of five years had been established for the submission of reports, and that worked fine in the majority of cases, when the human rights situation did not alter appreciably over such a period. When there was civil unrest, internal conflict or outright war, however, changes could occur rapidly and dramatically, and it was then useful to have a mechanism for checking the human rights situation more frequently.

28. It was true that each member of the Committee was entitled to put forward a proposal to request a special report from a given country; the fact that members hailed from all the world's geographical and political regions was an advantage, as it gave different members insight into the problems of different countries. He did not go along with the second sentence of paragraph 11, however, because the Committee's role was not to serve as a rapid response mechanism, but to analyse thoroughly human rights situations throughout the world with a view to uncovering serious violations.

29. Mr. ANDO agreed with the brief historical review given by Mr. Pocar and also endorsed the comments made by Mr. Lallah. The Committee had always exercised considerable caution in adopting special decisions and that approach should be maintained. Other bodies, such as the Commission on Human Rights and its Sub-Commission, were more suited than the Committee to deal with ad hoc situations in the human rights area; in particular, NGOs had a certain status in those bodies but not in the Committee. The Committee was, of course, free to ask a State party for an additional report in special circumstances, but the criteria applied in determining such circumstances should be very strict.

30. Mr. BHAGWATI said that he saw no objection to the proposal for a new regular agenda item contained in the last sentence of paragraph 10. The real difficulty, in his view, would arise when choosing among the many countries where human rights were seriously jeopardized. Mr. Ando was right to point out that the Committee was a treaty body not designed to deal with ad hoc situations. Recourse to special decisions should be confined to cases of emergency.

31. Mr. BUERGENTHAL agreed with Mr. Bhagwati on the subject of the proposal in paragraph 10, and with Mr. Bruni Celli and Mr. Ando on the subject of paragraph 11. The Committee was a treaty body and any special report it requested should be related to the specific task of monitoring the implementation of the Covenant. The difficulty could be resolved simply by dropping the second sentence of paragraph 11. In addition, he proposed that in the last sentence of paragraph 11 the words "should be mandated to" should be replaced by "may".

32. Mr. KLEIN said that the Working Group had chosen to speak of situations where human rights were seriously jeopardized rather than emergencies so as to avoid any misunderstanding in the event of an emergency that was known to exist but had not been formally declared. While recognizing that the sentence in question could give rise to difficulties, he wished to emphasize that the Committee's competence to request a State party to submit a special report under article 40, paragraph 1 (b), of the Covenant was not in question. The proposal formulated in paragraph 11 was in no way revolutionary; in fact, it reflected a practice which the Committee had already followed on a number of occasions.

33. Mr. FRANCIS, taking up the point just made by Mr. Klein, said that he saw no harm in formulating an objective rule to govern a procedure which had been adopted on several occasions in the past, provided the wording employed was sufficiently flexible.

34. Ms. MEDINA QUIROGA said that she favoured the solution proposed by Mr. Buergenthal. Any member of the Committee should be allowed to draw attention to any situation or development that might call for a special decision by the Committee. It was not necessary, and would perhaps be unwise, to define too closely what such a situation or development might be.

35. Mr. KRETZMER also endorsed Mr. Buergenthal's proposals. Mr. Klein was, of course, right on the issue of the Committee's competence, but the point at issue was, rather, the object that would be pursued by a request for a special report. As a treaty body, the Committee had an important but limited role to play.

36. Mrs. CHANET agreed with Mr. Lallah on the question of the role assigned to the Rapporteur in the paragraphs under consideration and elsewhere in the Working Group's recommendation. All members of the Committee should enjoy the same possibilities for action as the Rapporteur. However, the Committee could perhaps authorize the Rapporteur to monitor a particular situation between sessions of the Committee and to report on that situation at the next session. The Committee would then decide, in the light of the Rapporteur's report, whether or not to adopt a special decision in accordance with article 40, paragraph 1 (b). Beyond that, there was no need to grant any new prerogatives to the Rapporteur.

37. The CHAIRMAN, speaking as a member of the Committee, agreed that any member should be permitted at any time to bring urgent cases to the Committee's attention with a view to the adoption of a special decision. Accordingly, he suggested that the reference to the Rapporteur in the first sentence of paragraph 11 should be deleted.

38. Mr. BRUNI CELLI drew attention to the risk that a decision to request a special report might be regarded by the country concerned as having been politically motivated. As a safeguard against such a view, he would suggest that the discussion preceding the adoption of a special decision should take place in closed session and that the decision should be adopted unanimously. As to the second sentence of paragraph 11, he agreed that it should be dropped as being excessively accusatory in tone.

39. Mr. POCAR said he tended to disagree with the suggestion that the discussion on whether or not to adopt a special decision should take place in closed session. A better safeguard against possible future accusations of political bias would be to avoid speaking of serious human rights violations but, instead, to say that "such decisions should be taken when events in a country so require". Such a wording would cover all emergency situations, whether declared or not. It would also cover the situation in Hong Kong, which, without being strictly speaking an emergency, nevertheless warranted a request for a special report.

40. Mr. FRANCIS said that in the long term the Committee would save time if it laid down specific methods of work. With regard to the human rights situations covered by paragraph 11, he had no difficulty in agreeing to the deletion of that reference. However, the Committee should not forget that there were times when massive violations occurred and, although the State remained responsible for what happened within its territory, it might not have direct responsibility for those violations. In that connection he recalled the situation in Haiti, under the military regime, when people were being killed by paramilitary forces. The Government at the time could not be held responsible and, as Mr. Pocar had convincingly established, the Committee should not adopt too general an approach in such cases. If violations persisted, the Committee would be justified in calling for a special report.

41. Ms. EVATT said that the Committee needed to arrive at a flexible and facilitative way of exercising its authority to request reports from States outside the normal reporting cycle. It should be flexible enough to give members the opportunity to raise that question, and it should be facilitative in the sense that the Committee should not be forced to do so. She preferred to delete the second sentence and to take up Mr. Pocar's suggestion to include the phrase "when events in a country so require" at the beginning of the paragraph. The Committee needed to stress that there might be some circumstances in which it had a role to play and wished to act, and others in which it might not wish to do so. Uniformity was required in the Committee's approach in order to avoid seeming to treat different States differently.

42. Mr. LALLAH recalled that on the very first occasion when the Committee had wanted to use its power under article 40, paragraph 1 (b), the Cold War had still been raging and Poland had declared a state of emergency. Some members of the Committee at that time had wanted to request a special report. The question had then arisen why, since Ireland had also declared a state of emergency, the Committee should not ask for a special report from that country, and from other countries which, without declaring a state of emergency, had adopted extraordinary measures. He agreed with Ms. Evatt that the Committee must be flexible and take decisions on a case-by-case basis. No such difficulties had arisen in the cases of Iraq, the former Yugoslavia and Hong Kong. He agreed with Mr. Pocar's suggestion.

43. He asked members to make it clear whether what was involved was a "special decision" or a "decision to request a special report". When he had first looked at paragraph 11, he had believed the Committee was needlessly restricting its powers under article 40, paragraph 1 (b), and wondered why in its working methods the Committee should be seen to be doing that. However, after careful consideration, he regarded paragraph 11 as a working instrument

assigning primary responsibility to the Rapporteur and taking that responsibility away from the Bureau. The Rapporteur would make suggestions to the Bureau and presumably the Bureau would bring them to the attention of the Committee.

44. Ms. MEDINA QUIROGA said she would prefer not to use the word "emergency" with reference to Hong Kong because that word had a clear legal meaning. The use of the expression "when events so require" would make it known that the Committee was prepared to invoke article 40, paragraph 1 (b). The Committee should be sufficiently flexible to request a special report if a country had a consistently bad human rights record, whether or not that country was in a state of emergency, but it should be kept in mind that there would be times when the Committee would be unable to make a constructive contribution.

45. Mr. BHAGWATI agreed that paragraph 11 should provide for flexibility and that the Committee should not limit its power by using any expression which could ultimately be held against it. Instead of "special decision" he suggested that the words "decision for a special report" should be used. The paragraph should read: "The Working Group believes that any member of the Committee may suggest to the Committee, when he or she deems it necessary, the adoption by the plenary of a decision requesting a State to submit a special (or brief) report on the implementation of certain provisions of the Covenant when events in a country so require. The Committee may take such a decision where it finds it expedient to do so." That would make the paragraph flexible, and its only limitation would be "when events in a country so require", as suggested by Mr. Pocar.

46. The CHAIRMAN suggested that the first sentence should read: "When events in a State party so require, the plenary may adopt a decision requesting a State party to submit a brief report".

47. Mr. BRUNI CELLI pointed out that article 40 of the Covenant did not refer to "special" reports but simply to "reports". That was important because if the Committee wished to invoke article 40, paragraph 1 (b), it could not describe such reports as "special"; all it had was a mandate to request a "report".

48. Mr. BAN said he was concerned about an apparent discrepancy between paragraph 11 of the recommendation and rule 66, paragraph 2, of the Committee's rules of procedure, the first sentence of which stated: "Requests for submission of a report under article 40, paragraph 1 (b), of the Covenant may be made in accordance with the periodicity decided by the Committee or at any other time the Committee may deem appropriate." What the Committee was trying to do was to explain when it deemed it appropriate to request a report. He had understood that the report should be based on a special decision. If the Committee was to deal with that issue, it should not fail to explain how it interpreted the second sentence of rule 66, paragraph 2, which stated: "In the case of an exceptional situation when the Committee is not in session, a request may be made through the Chairman, acting in consultation with the members of the Committee."

49. Mr. ANDO associated himself with Mr. Ban's comments. He also agreed with Mrs. Chanet that no special prerogative should be given to the Rapporteur. It was the members, the Chairman and the plenary who were involved in the process. He agreed wholeheartedly with Mr. Bhagwati's proposal and suggested that the word "events" should be replaced by "events or situation".

50. Mrs. CHANET agreed with Mr. Bhagwati's and Mr. Ando's views on the language of the text, which did not in any way distort the meaning of the rules of procedure. However, paragraph 11 did not add anything new to the situation. If the Committee wished to be innovative, it could perhaps give the Rapporteur authority to consider certain situations between sessions, and report on them at the following session.

51. Mr. KRETZMER endorsed Mr. Bhagwati's suggestion but was still slightly concerned about the point raised by Ms. Medina Quiroga on the clear objective of the report. He believed that its objective was to further the implementation of the Covenant. Instead of saying "when the Committee deems the submission of such reports to be expedient" or words to that effect, it should say quite explicitly "when the Committee sees that submission of a report would further implementation of the Covenant". He was aware that his suggestion was very general, but it would keep the Committee within the scope of its mandate.

52. Mr. BUERGENTHAL said he was prepared to accept the draft but wished to propose that "events" should be replaced by "exceptional circumstances", using the language of the rules of procedure.

53. Mr. POCAR said that in the light of the discussion it seemed doubtful whether it was necessary to retain paragraph 11. Members were already allowed to make suggestions to the Committee. He objected to the use of "exceptional situations" because that expression, as used in rule 66, did not refer to the situation in a particular country, but to situations in which the Chairman was authorized to take decisions when the Committee was not in session. Normally, the Chairman should wait for a session to be convened and then propose the adoption of a special decision to the Committee. He pointed out that rule 66 had been amended some years earlier when the Committee had deemed that useful.

54. The CHAIRMAN observed that, given the Rapporteur's current functions, the wording of paragraph 11 was not really appropriate. However, some parts of the paragraph could be kept to encourage members to act because, even though rule 66 existed, members did not usually invoke it.

55. Ms. MEDINA QUIROGA said the word "encourage" should be used in order to prompt members to draw attention to situations in which a special report might be in order.

56. Mr. LALLAH agreed that paragraph 11 was not needed if the Committee was not giving the Rapporteur a role.

57. The CHAIRMAN said he did not see why it was necessary to keep the paragraph.

58. Mr. KLEIN concluded that after much discussion the Committee had decided that the paragraph was not needed. He thought the Committee had reached a consensus on the basis of Mr. Bhagwati's proposal; if that proposal were combined with Mrs. Chanet's proposal, there would be something to keep. He wished to remind the members that the purpose of the recommendation was not to amend the rules of procedure, but to give the Committee a basis on which to proceed. He suggested that the Committee should move on to paragraph 12.

59. Ms. EVATT said the main point of paragraph 12 was that when a State report was seriously overdue, someone, such as the Rapporteur, could determine whether further action should be taken. That problem had arisen time and again. Her proposal was that the Rapporteur or a working group should see what information was available on the country and then recommend what positive action could be taken. She fully supported the text, except for the last sentence, in which she would suggest the deletion of the word "special" in order to keep it in conformity with what had been said before.

60. The CHAIRMAN said that the action recommended in the first part of the paragraph was already carried out by the Bureau, but the second part of the paragraph was important. Since the Rapporteur's functions had changed, he could examine information on the country in question provided by other United Nations sources and NGOs.

61. Mr. BHAGWATI supported the text of paragraph 12. The Rapporteur should be able to follow up on matters between sessions and suggest whether any country might be the subject of a decision as specified in paragraph 11. Although he might not play a direct role under that paragraph, he could be given the role, under paragraph 12, of requesting a special or brief report from a State party in default of its obligations under article 40.

62. Mr. POCAR said it would be dangerous to give the impression that the Committee was prepared to absolve States whose reports were long overdue when the situation in those countries was not serious enough to warrant the submission of a special report. The obligation of a State party to submit its report was entire and should be considered as such by the Committee. The Rapporteur could make a preliminary study to enable the Committee to adopt a special decision. He was willing to agree that the Committee should be selective in adopting special decisions but that fact should not be made known to States parties lest it conveyed the wrong impression.

63. Mr. LALLAH said that the Committee should not, by suggesting that it would be satisfied with a brief special report, give the impression that it was rewarding a culprit. Under the current practice, the Bureau assigned to members of the Committee the task of contacting various delegations to urge them to submit overdue reports. As one of the duties carried out in New York - on the basis of which Headquarters had agreed that one of the Committee's sessions should be held there, it allowed members to develop relationships not only with the representatives of States parties but also with members of the Third Committee and should therefore not be summarily abandoned.

64. The CHAIRMAN said that, as he understood it, paragraph 12 was meant not to address the question of all overdue reports, but specifically those of States parties whose human rights situations called for special decisions.

65. Mr. KLEIN said that indeed paragraph 12 was not intended to alter pre-existing procedure but to allow a special additional procedure in cases where the usual efforts proved unsuccessful.

66. Mr. BRUNI CELLI observed that the problem of late reports had been discussed at every session but to no effect. Certain States owed as many as four or five reports. In his view, it would be preferable to take a more practical approach; the Working Group on article 40 should be assigned the task of thoroughly studying the problem and formulating concrete proposals. It might be decided, for example, that reports should be consolidated; a request for four reports from one State was frankly absurd. Such an approach would, of course, have to be assessed for its conformity with the terms of article 40.

67. Mr. ANDO said paragraphs 12, 13 and 14, considered together, suggested that the Committee should introduce the practice of considering the situation of a State party in the absence of a report; that might be the reason behind Mr. Pocar's caution against departing from past practice. He agreed with Mr. Bruni Celli that the Working Group might be instructed to consider the problem of overdue reports; it should study with great care the notion of assessing the State party in the absence of a report. While article 40 established the distinction between initial and periodic reports, it did not prevent the Committee from otherwise addressing the problem of failure to report.

68. Mr. BAN supported the views of Mr. Bruni Celli. Paragraph 12 addressed only a portion of the broader question and its intent was unclear. Given the very long lists of overdue initial and periodic reports, how in fact could the Bureau or the Rapporteur cope with that task? Two factors were involved: first, the matter of the non-submission of reports, and secondly, the non-submission of reports by countries whose human rights situations gave rise to serious concern. Paragraph 12 addressed the first; paragraph 11 offered a remedy only in the latter case. In his view, it would prove difficult for the Committee to determine when and how to invoke the procedure proposed in paragraph 12. The proposal as it stood did not seem practical.

69. Ms. EVATT said that Mr. Bruni Celli had offered an interesting new idea. Paragraph 12 did not purport to alter the current practice, but instead offered an additional tool that could be used if needed. The beauty of the proposal was that it would enable the Committee to tailor its response to the status of a particular State party.

70. Mr. FRANCIS said that no State in default on article 40 should be accorded special treatment. The Committee might, starting with the most serious offender, address an appropriate letter to the State party, requesting it to explain the reason for its non-compliance and clearly indicating when the report was expected. Only on receipt of the answer should further steps be taken. Consideration of the answer could, he agreed, be undertaken by the Working Group on article 40.

71. Ms. MEDINA QUIROGA said it was regrettable that, when the Working Group had met in March, new members had been unfamiliar with the current procedure for dealing with overdue reports. On inquiring, she had simply been told that negligent countries were sent a reminder. The Working Group had taken the view that the procedure should be made more forceful, in particular with regard to States parties that had failed to submit reports and were otherwise in serious violation of the terms of the Covenant. It had therefore proposed that those States parties should be requested to submit a special report. She had, however, maintained the view that it was useless to request a special report from a State unable to produce even a regular one. Paragraph 14 included a worthy new proposal, namely, that States that had not submitted written reports should be asked to provide an oral one.

72. Mr. EL SHAFEI said it was well to be clear that paragraphs 12, 13 and 14 contained the proposal that the Committee should request certain States parties to submit special reports on special areas of concern. The Covenant included no provisions for the adoption of such a method; it would furthermore set a dangerous precedent. Letters would have to be addressed to roughly one third of all States parties. The question must be asked whether States parties would choose to fulfil their reporting obligations if others were absolved of the responsibility. In his view, it would be preferable to bring pressure to bear on negligent States parties by publicizing the problem. The matter might, for instance, be placed on the agenda of the Third Committee of the General Assembly. The High Commissioner for Human Rights might also be asked to give publicity to that important issue.

73. Mr. POCAR said, by way of clarification, that he had not intended to propose that States should be assessed in the absence of reports; that was simply one approach adopted by other treaty bodies for dealing with that problem. He had intended only to express concern that paragraph 12, as worded, might suggest that the Committee would absolve States parties of their reporting obligations if their human rights records were acceptable. Having followed the discussion, he now had reason to doubt the value of paragraph 12. The question whether a State whose report was long overdue would comply with the request to submit a special report was worth considering. The answer was probably that it would not. He therefore supported Mr. Bruni Celli's proposal that the Working Group should be asked carefully to examine the problem: one approach was to assess the human rights situation of a State party in the absence of a report; another was to ask a State party to present an oral report; a third was the consolidation of reports.

74. Mr. KLEIN said he had no objection to the proposal that the Working Group should be requested to study the issues raised by those paragraphs; it was clear that consensus would not be reached on the text as it stood. He differed with Ms. Medina Quiroga: when the matter of the procedure for dealing with overdue reports had been discussed in the Working Group, both new members and more experienced members had been present. For his part, he had been well aware, when drafting the recommendation of the Working Group, of the practice whereby members discussed overdue reports with the representatives of States parties.

75. In reply to the point raised by Mr. Ando, he said that paragraph 12 did not purport to suggest that States that had failed to report should be assessed either orally or in absentia. It simply proposed that further steps should be taken to encourage the State to act. Finally, while paragraph 14 did include a new proposal, it was not directly related to the problems covered by paragraph 12.

76. Mr. LALLAH supported Mr. Bruni Celli's proposal. In his view, not only the proposals contained in paragraph 12 but those in paragraphs 13 and 14 should be referred to the Working Group. A misunderstanding had clearly arisen: new members should, of course, be fully apprised of the current procedure for dealing with overdue reports.

77. The CHAIRMAN, responding to the point made by Ms. Medina Quiroga, said that the procedure in question had been mentioned at the briefing for new members in March; furthermore, as was the usual practice, at the close of the previous session members had briefed the Committee concerning the substance of their discussions with States parties.

78. Ms. MEDINA QUIROGA said that knowing that members were speaking to representatives of States parties was altogether different from knowing that such was Committee practice. Much of what had transpired in March was unclear. New members had been briefed by Mrs. Higgins with regard to communications; they had not been briefed on methods of work relating to article 40.

79. The CHAIRMAN said he regretted that the procedure seemed not to have been sufficiently clear to some new members; efforts would be made to redress that problem in the future. For his part, he had met, over the course of the years, with the representatives of several States parties, sometimes repeatedly, but to no effect. It was crucial to devise new approaches; the situation as it stood was clearly unacceptable.

The meeting rose at 6.05 p.m.